



Agenda Date: 11/10/09
Agenda Item: 2E

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

DIVISION OF ENERGY &
OFFICE OF CLEAN ENERGY

IN THE MATTER OF ENERGY EFFICIENCY)
PROGRAMS AND ASSOCIATED COST)
RECOVERY MECHANISMS)

ORDER ADOPTING
STIPULATION

DOCKET NO. EO09010056

IN THE MATTER OF THE VERIFIED PETITION)
OF JERSEY CENTRAL POWER & LIGHT)
COMPANY CONCERNING A PROPOSAL FOR)
ECONOMIC STIMULUS DEMAND RESPONSE)
AND ENERGY EFFICIENCY PROGRAMS AND)
ASSOCIATED COST RECOVERY MECHANISM)

DOCKET NO. EO09010062

Marc B. Lasky, Esq. (Morgan, Lewis & Bockius LLP, attorneys) for the Petitioner, Jersey Central Power & Light Company

Paul Flanagan, Esq., Felicia Thomas-Friel, Esq., Deputy Public Advocates, and Diane Schulze, Esq., Assistant Deputy Public Advocate, Department of the Public Advocate, Division of Rate Counsel (Ronald K. Chen, Esq., Public Advocate, Stefanie A. Brand, Esq., Director)

Caroline Vachier, Esq., Kerri Kirschbaum, Esq., Jessica L. Campbell, Esq. and Alex Moreau, Esq., Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities (Anne Milgram, Esq., Attorney General of New Jersey)

Stephen R. Kern, Esq., Robert A. Weishaar, Jr., Esq. and Dennis P. Jamouneau, Esq. (McNees Wallace & Nurick LLC, attorneys) for Gerdau Ameristeel Corporation

Richard Webster, Esq. (Eastern Environmental Law Center) and Luis G. Martinez, Esq. (Staff Attorney) for Natural Resources Defense Council

BY THE BOARD:

On November 9, 2009, Jersey Central Power & Light ("JCP&L" or "Company"), the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the Staff of the New Jersey Board of Public Utilities ("Board Staff") and Gerdau Ameristeel ("Gerdau"), (collectively, the "Signatory Parties") entered into an agreement ("Stipulation") for an extension of the 180-day review period provision for cost recovery under N.J.S.A. 48:3-98.1(b), in connection with the

Company's proposed Energy Efficiency Stimulus Programs ("EE Programs"). The only other party, the Natural Resources Defense Counsel ("NRDC"), was provided with the proposed Stipulation but did not indicate any position on the extension.

By this Order, the New Jersey Board of Public Utilities ("Board") considers the Stipulation further extending the time frame for review of JCP&L's EE Programs.

Background and Procedural History

On February 20, 2009, JCP&L filed a petition ("EE Stimulus Petition") with the Board pursuant to N.J.S.A. 48:3-98.1. On March 20, 2009, Board Staff notified JCP&L that the filing was not administratively complete. By letter dated April 10, 2009 and filed on April 13, 2009, the Company submitted a supplemental filing.¹ By letter dated May 9, 2009, Board Staff notified the Company that the EE Stimulus Petition, as supplemented on April 13, 2009, was deemed to be administratively complete with respect only to the EE Programs.² Thus, the 180 review period commenced on April 13, 2009 and, according to the Stipulation considered by this Order, would have ended on October 9, 2009 for each of the EE Programs. However, the review period was extended until November 17, 2009 in accordance with the provisions of a stipulation dated October 2, 2009 that was approved by Board Order dated October 8, 2009.

JCP&L EE Stimulus Petition

In the EE Stimulus Petition, JCP&L proposed to implement, among other things, the following EE Programs: (1) a "whole house" energy efficiency program for residential customers; and (2) a "whole building" energy efficiency program for non-residential customers. As noted above, the Company also proposed four small scale/pilot demand response programs that had been previously filed and remained pending before the Board in Docket No. EO08080542.³ It is estimated that the two EE Programs will cost approximately \$12.7 million (including administrative costs) and will support approximately 84 jobs, plus three administrative positions.

The proposed segments are as follows:

- Residential Customers – The Whole House Energy Efficiency Program for Residential Customers, with a budget of approximately \$9.1 million, plus administrative costs, is designed to incentivize existing residential customers to use a whole house approach to

¹ The Company's supplemental filing is date-stamped April 12, 2009. However, that date was Easter Sunday of this year, and it appears that some electronic or mechanical error must have occurred. Accordingly, the 180-day period for a Board determination on cost recovery associated with the EE Programs commenced on the following business day, April 13, 2009. While the earlier stipulation memorialized the end of the 180-day period as October 9, 2009, further calculation shows that this date should actually have been October 13, 2009.

² N.J.S.A. 48:3-98.1 requires the Board to decide cost recovery issues within 180 days. Pursuant to the Board Order issued in response to a further statutory directive within that section, Board Staff must review a petition for completeness within 30 days, and, when a petition is determined to be administratively complete, set the beginning of the 180-day period from the date of the filing or the date of the filing of the last remediating document. In The Matter Of Electric Public Utilities And Gas Public Utilities Offering Energy Efficiency And Conservation Programs, Investing In Class I Renewable Energy Resources, And Offering Class I Renewable Energy Programs In Their Respective Service Territories On A Regulated Basis Pursuant To N.J.S.A. 48:3-98.1, BPU Docket No. EO08030164 (May 12, 2008).

³ By letter dated May 15, 2009, JCP&L agreed to separate the processing of its then-pending four proposed demand response programs from the processing of the EE Stimulus Petition.

reduce energy consumption when considering home improvements, heating and cooling system installations or replacing appliances. Among other things, the program will offer an on-line energy audit, buy-down of financing costs associated with the New Jersey Clean Energy Program ("NJCEP") Home Performance With Energy Star program, enhanced incentives for heating and cooling appliance replacement and upgrades supported by the NJCEP, and community outreach and other efforts. The Company expects that management and implementation of this program will be provided through the NJCEP residential market managers or through third party providers.

- o Non-Residential Customers – The Whole Building Energy Efficiency Program for Non-Residential Customers, with a budget of approximately \$3.1 million, plus administrative costs, is designed to enhance and complement existing NJCEP offerings by enabling continued non-residential investments in energy efficiency technologies supported by the New Jersey SmartStart Building ("SSB") program, particularly targeting municipal, school and state facilities. This program will entail, among other things, training seminars for customers, supplemental rebates for non-lighting energy efficiency investments supported by the SSB, supplemental grants for municipal, school, State and multi-family customers and evaluation of the energy savings impacts of the energy efficiency programs relative to customers' existing equipment. In implementing this program, the Company expects to work directly with the market managers as well as through one or more new contractors.

According to the EE Stimulus Petition, the Company wishes to recover the expenditures under the EE Programs with a full return over the 12-month period commencing immediately upon issuance of a Board Order approving the EE Programs. JCP&L has requested carrying costs on any unrecovered expenditures at a rate equal to its Weighted Average Cost of Capital ("WACC"), including income tax effects, as determined in its last base rate case (11.61 %). The applicable Rider or clause will be subject to deferred accounting, with interest at the same rate on over-and under-recoveries based on a 12-month amortization.

By Order dated February 19, 2009, the Board retained all EE matters for review and hearing and, as authorized by N.J.S.A. 48:3-32, designated President Jeanne M. Fox as the presiding officer who was authorized to rule on all motions that arise during the proceeding and modify any schedule(s) that may be set as necessary to secure just and expeditious determinations in this matter. Motions to intervene in this proceeding filed by Gerdau and the NRDC were granted by Orders dated April 6, 2009 and April 28, 2009, respectively, signed by Board President Jeanne M. Fox as presiding officer for this case.

Since the filing of the February 20 Petition, the Signatory Parties have engaged in extensive discovery and participated in a number of settlement and discovery conferences. In addition, the EE Programs were forwarded to the Center for Energy, Economic and Environmental Policy ("CEEPP") for performance of a Cost Benefit Analysis ("CBA") for each of the components of the EE Programs. While the Signatory Parties continued to discuss modifications to the EE Programs, as of the date of this Order, the Signatory Parties have not been able to reach a settlement of all outstanding issues.

In light of the fact that the Signatory Parties' discussions may not be completed and a Stipulation of Settlement may not be ready for submission to the Board by the current deadline, the Signatory Parties have agreed to request an extension to provide the Board with additional time to complete the processing of the EE Stimulus Petition and issue a final determination in this matter.

PROPOSED STIPULATION

The Signatory Parties have agreed that pursuant to N.J.S.A. 48:2-21.3, solely in connection with the EE Programs included in the EE Stimulus Petition, that the 180-day review period provision of RGGI shall now be deemed to expire on December 9, 2009 instead of on November 17, 2009. The Signatory Parties have agreed that the extension of the statutory deadline will provide additional time to develop their positions, so that the Board will have a fuller and more accurate record for review of the EE Programs before it issues a final determination in this matter. No parties oppose the Stipulation. NRDC was given notice of the proposed Stipulation and took no position.


DISCUSSION AND FINDING


N.J.S.A. 48:2-21.3 allows any public utility to file with the Board a written stipulation waiving the effective date of any tariff or rate, subject to the Board's approval. In this case, no parties have opposed the Stipulation and the extension of the review period it contains. JCP&L has agreed to an extension until December 9, 2009. The Board **FINDS** that the need of the parties to continue their discussions while developing their positions further and the time required for review of the expanded record of the proposed EE Programs which will result, justifies an extension of time beyond the current period to December 9, 2009.

For the foregoing reasons, the Board **HEREBY APPROVES** the attached Stipulation.

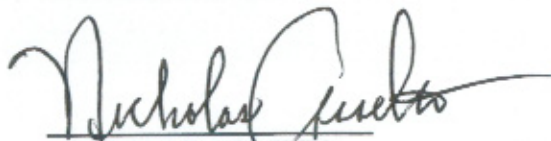
DATED: 11/10/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

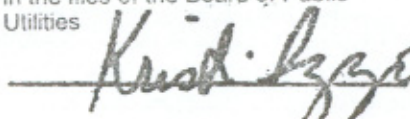

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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In the Matter of the Energy Efficiency	:	
Programs and Associated Cost Recovery	:	
Mechanism Proceedings	:	
	:	
BPU DOCKET NO. EO09010056	:	
<hr/>	X	STIPULATION
	:	
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In the Matter of the Verified Petition of	:	
Jersey Central Power & Light Company	:	
Concerning a Proposal Concerning	:	
Economic Stimulus Demand Response and	:	
Energy Efficiency Programs and Associated	:	
Cost Recovery Mechanism	:	
	:	
BPU DOCKET NO. EO09010062	:	
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APPEARANCES:

Marc B. Lasky, Esq. (Morgan, Lewis & Bockius LLP, attorneys) for the Petitioner, Jersey Central Power & Light Company

Paul Flanagan, Esq., Felicia Thomas-Friel, Esq., Deputy Public Advocates, and **Diane Schulze, Esq.,** Assistant Deputy Public Advocate, Department of the Public Advocate, Division of Rate Counsel (**Ronald K. Chen, Esq.,** Public Advocate, **Stefanie A. Brand, Esq.,** Director)

Caroline Vachier, Esq., Kerri Kirschbaum, Esq., Jessica L. Campbell, Esq. and **Alex Moreau, Esq.,** Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities (**Anne Milgram, Esq.,** Attorney General of New Jersey)

Stephen R. Kern, Esq., Robert A. Weishaar, Jr., Esq. and **Dennis P. Jamouneau, Esq.** (McNees Wallace & Nurick LLC, attorneys) for Gerdau Ameristeel Corporation

Richard Webster, Esq. (Eastern Environmental Law Center) and **Luis G. Martinez, Esq.** (Staff Attorney) for Natural Resources Defense Council

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This Stipulation is hereby made and executed as of the 9th day of November, 2009, by and among Jersey Central Power & Light Company ("JCP&L" or the "Company"), Gerdau Ameristeel Corporation ("Gerdau"), the Staff of the Board of Public Utilities ("Staff") and the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") (collectively, the "Signatory Parties").

The Signatory Parties do hereby join in recommending that the Board of Public Utilities ("Board") issue an Order approving this Stipulation, based upon the following stipulations:

Background

Pursuant to N.J.S.A. 48:3-98.1 (sometimes referred to as "RGGI"), the Company filed a Petition with the Board on February 20, 2009 ("February 20 Petition") in response to Governor Corzine's announced plans made on October 16, 2008 to promote the goals of the comprehensive Economic Stimulus Package for New Jersey, the goal of which is to stimulate the State's economy. Such goals included proposals for the State's utilities to propose a number of programs during 2009 to help revive the State's economy and foster job growth. In the February 20 Petition, JCP&L proposed to implement, among other things, two new energy efficiency programs ("EE Programs") -- a "whole house" energy efficiency program for residential customers and a "whole building" energy efficiency program for non-residential customers -- at a total cost of approximately \$12.7 million. The Company also included in the February 20 Petition four small scale/pilot demand response ("DR") programs that had been previously filed and remained pending before the Board in Docket No. EO08080542.

By Order dated February 19, 2009,¹ the Board determined to retain this matter for consideration and, pursuant to N.J.S.A. 48:2-32, designated Board President Jeanne M. Fox as the presiding officer.

On March 20, 2009, Board Staff notified the Company that the February 20 Petition was not administratively complete for purposes of the so-called RGGI Order². Thereafter, by letter sent on April 10, 2009 and filed at the Board on April 13, 2009, the Company supplemented the February 20 Petition. By letter dated May 9, 2009, Board Staff notified the Company that the February 20 Petition, as supplemented by JCP&L on April 13, 2009, was deemed to be administratively complete with respect only to the EE Programs for the purposes of the RGGI Order. Thus, the 180-day review period commenced on April 13, 2009 and would have ended on October 9, 2009 for each of these EE Programs.

Additionally, by letter dated May 15, 2009, JCP&L agreed to separate the processing of its then-pending four proposed DR programs from the processing of the February 20 Petition, so that the February 20 Petition, as supplemented, now relates only to the two EE Programs.

Motions to intervene in this proceeding filed by Gerdau and the Natural Resources Defense Council were granted by Orders dated April 6, 2009 and April 28, 2009, respectively, signed by Board President Jeanne M. Fox as presiding officer for this case.

Following the filing of the February 20 Petition, the Signatory Parties engaged in extensive discovery and participated in a number of settlement and discovery conferences. In addition, the EE Programs were forwarded to the Center for Energy, Economic and

¹ *In the Matter of Energy Efficiency Programs and Associated Cost Recovery Mechanisms, et al.*, Order Designating Commissioner, BPU Docket Nos. EO09010056, et al. (February 19, 2009).

² *In The Matter Of Electric Public Utilities And Gas Public Utilities Offering Energy Efficiency And Conservation Programs, Investing In Class I Renewable Energy Resources, And Offering Class I Renewable Energy Programs In Their Respective Service Territories On A Regulated Basis Pursuant To N.J.S.A. 48:3-98.1*, BPU Docket No. EO08030164 (May 12, 2008).

Environmental Policy ("CEEEP") for performance of a Cost Benefit Analysis for each of the components of the EE Programs. While the Signatory Parties continued to discuss modifications to the EE Program, as of October 2, 2009 the Signatory Parties had not been able to reach a settlement of all outstanding issues.

In light of the fact that the Signatory Parties' discussions were not be completed and a Stipulation of Settlement was not ready for submission to the Board by the October 9, 2009 date, by Stipulation executed on October 2, 2009, the Parties agreed that, in order to allow sufficient time for the administrative processing of the February 20 Petition, the RGGI date of October 9, 2009 should be extended and a revised RGGI date of November 17, 2009 established. The Signatory Parties therefore, pursuant to N.J.S.A. 48:2-21.3, requested that the Board issue an Order on or prior to October 9, 2009 extending the current RGGI date of October 9, 2009 and establishing a revised RGGI date of November 17, 2009 for purposes of extending the 180 day RGGI period to November 17, 2009 and allowing completion of the procedural processing of the February 20 Petition.

By Order dated October 7, 2009, the Board approved the Stipulation extending the 180-day RGGI period to November 17, 2009.

In light of the fact that the Signatory Parties' discussions may not be completed and a Stipulation of Settlement may not be ready for submission to the Board by the November 17, 2009 date, the Signatory Parties have agreed to request an additional extension in order to provide the Board with additional time to complete the processing of the February 20 Petition and issue a final determination in this matter.

Stipulation

The undersigned Signatory Parties DO HEREBY STIPULATE AND AGREE as follows:

1. The Signatory Parties agree pursuant to N.J.S.A. 48:2-21.3, solely in connection with the EE Programs included in the February 20 Petition, that it will waive the 180-day review period provision of RGGI, provided that the 180-day review period shall now be deemed to expire on December 9, 2009. The Signatory Parties acknowledge and agree that such agreement by JCP&L is strictly limited to the EE Programs and has no precedential authority and that JCP&L retains all rights to seek to enforce RGGI time frames in connection with any other filings to which the provisions of RGGI apply.

Conclusion

2. The Signatory Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular provision of this Stipulation is not accepted and approved in its entirety by the Board, or is modified by a court of competent jurisdiction, then any Signatory Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice, to be provided to all other Signatory Parties within ten (10) days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in an appropriate Order, or is modified by a court of competent jurisdiction, then any Signatory Party hereto is free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed.

3. The Signatory Parties agree that this Stipulation shall be binding on them for all purposes herein.

4. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, (i) no Signatory Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation, and (ii) the Signatory Parties shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein in total or by specific item. The Signatory Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

5. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Signatory Parties.

WHEREFORE, the Signatory Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and recommend that the Board issue a Final Decision and Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

Jersey Central Power & Light Company

By: _____

Marc B. Lasky
Morgan, Lewis & Bockius LLP

Dated: _____

11/9/09

ANNE MILGRAM

ATTORNEY GENERAL OF NEW JERSEY

Attorney For

Staff of The Board of Public Utilities

By: _____

Kerri Kirschbaum
Deputy Attorney General

Dated: _____

Ronald K. Chen

Public Advocate of New Jersey

Stefanie A. Brand

Director, Rate Counsel

By: _____

Diane Schulze
Assistant Deputy Public Advocate

Dated: _____

Gerdau Ameristeel Corporation

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Robert A. Weishaar, Jr.
McNees Wallace & Nurick LLC

Dated: _____

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Morgan, Lewis & Bockius LLP

Dated: _____

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney For
Staff of The Board of Public Utilities

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Kerri Kirschbaum
Deputy Attorney General

Dated: _____

Ronald K. Chen
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Director, Rate Counsel

By: Diane Schulze
Diane Schulze
Assistant Deputy Public Advocate

Dated: 11/9/09

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Dated: _____

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney For
Staff of The Board of Public Utilities

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Deputy Attorney General

Dated: _____

Ronald K. Chen
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Director, Rate Counsel

By: _____
Diane Schulze
Assistant Deputy Public Advocate

Dated: _____

Gerdau Ameristeel Corporation

By: Robert A. Weishaar, Jr. *RS*
Robert A. Weishaar, Jr.
McNees Wallace & Nurick LLC

Dated: 11-6-09